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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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STRUCTURED CAPITAL SOLUTIONS, LLC :  
: Plaintiff, :  
: v. : 15-CV-905 (JSR) (JLC)  
: :  
COMMERZBANK, AG, NEW YORK BRANCH :  
: Defendant. :  
-----x

**DECLARATION OF PHILIP A. IRWIN**

I, Philip A. Irwin, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. I am a member in good standing of the bar of this Court and an attorney at Covington & Burling LLP, counsel to defendant Commerzbank, AG, New York Branch (“Commerzbank”) in the above-captioned matter. I make this declaration in support of Commerzbank’s Motion for Summary Judgment to place before the Court documents and information necessary for its determination of this motion.
2. Attached as Exhibit 1 is a true and correct copy of excerpts from the 30(b)(6) deposition of Structured Capital Solutions, LLC (“SCS”), taken July 9, 2015.
3. Attached as Exhibit 2 is a true and correct copy of Exhibit 7 to the SCS 30(b)(6) deposition, bearing Bates numbers SCS\_0000001-SCS\_0000035 (SCS PowerPoint presentation entitled “Asset Acquisition Structures,” dated January 29, 2013).
4. Attached as Exhibit 3 is a true and correct copy of Exhibit 11 to the SCS 30(b)(6) deposition, bearing Bates numbers SCS\_0000797- SCS\_0000805 (Information Use and Transaction Proposal Agreement between SCS and Deutsche Bank London Branch, dated October 26, 2009).

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5. Attached as Exhibit 4 is a true and correct copy of Exhibit 12 to the SCS 30(b)(6) deposition, bearing Bates numbers SCS\_0003485-SCS\_0003490 (Information Use and Disclosure Agreement between SCS and Standard Chartered Bank, dated April 28, 2010).

6. Attached as Exhibit 5 is a true and correct copy of Exhibit 13 to the SCS 30(b)(6) deposition, bearing Bates numbers SCS\_0001129-SCS\_0001136 (Information Use and Transaction Proposal Agreement between SCS and Swiss Re Financial Products Corporation, dated February 14, 2011).

7. Attached as Exhibit 6 is a true and correct copy of Exhibit 15 to the SCS 30(b)(6) deposition, bearing Bates numbers SCS\_0001119- SCS\_0001120 (Information Use and Disclosure Amendment Agreement, dated March 29, 2012).

8. Attached as Exhibit 7 is a true and correct copy of Exhibit 16 to the 30(b)(6) deposition, bearing Bates numbers SCS\_0000282-SCS\_0000291 (Advisory Agreement between SCS and AIG/AIG Portfolio Solutions, LLC, dated August 14, 2012).

9. Attached as Exhibit 8 is a true and correct copy of Exhibit 17 to the SCS 30(b)(6) deposition, bearing Bates numbers SCS\_0000983-SCS\_0000988 (Information Use and Disclosure Agreement between SCS and Magnetar Capital LLC, dated March 12, 2014).

10. Attached as Exhibit 9 is a true and correct copy of Exhibit 18 to the SCS 30(b)(6) deposition, bearing Bates numbers SCS\_0000439-SCS\_0000444 (Information Use and Disclosure Agreement between SCS, CommunityOne Bancorp, and Kimberlite Group LLC, dated July 10, 2014).

11. Attached as Exhibit 10 is a true and correct copy of Exhibit 19 to the SCS 30(b)(6) deposition, bearing Bates numbers SCS\_0000784-SCS\_0000790 (Information Use and

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Disclosure Agreement between SCS and Credit Suisse Securities (USA) LLC, dated July 21, 2014).

12. Attached as Exhibit 11 is a true and correct copy of Exhibit 20 to the SCS 30(b)(6) deposition, bearing Bates numbers SCS\_0000942-SCS\_0000947 (Fee Sharing Agreement between SCS and Kimberlite Group LLC, dated October 15, 2014).

13. Attached as Exhibit 12 is a true and correct copy of Exhibit 21 to the SCS 30(b)(6) deposition, bearing Bates numbers SCS\_0000890-SCS\_0000896 (Information Use and Disclosure Agreement between SCS, HomeStar Bank and Financial Services, and Kimberlite Group LLC, dated October 22, 2014).

14. Attached as Exhibit 13 is a true and correct copy of Exhibit 22 to the SCS 30(b)(6) deposition, bearing Bates numbers SCS\_0003478-SCS\_0003483 (Information Use and Disclosure Agreement between SCS, Sabal Palm Bank, and Kimberlite Group LLC, dated October 29, 2014).

15. Attached as Exhibit 14 is a true and correct copy of Exhibit 23 to the SCS 30(b)(6) deposition, bearing Bates numbers SCS\_0000806-SCS\_0000811 (Information Use and Disclosure Agreement between SCS, HCSB Financial Corporation, Horry County State Bank, and Kimberlite Group LLC, dated November 18, 2014).

16. Attached as Exhibit 15 is a true and correct copy of Exhibit 24 to the SCS 30(b)(6) deposition, bearing Bates numbers SCS\_0007249-SCS\_0007254, SCS\_0007294 (Information Use and Disclosure Agreement between SCS, Manhattan Investment Management Services Inc., and Kimberlite Group, LLC, dated July 22, 2014).

17. Attached as Exhibit 16 is a true and correct copy of Exhibit 26 to the SCS 30(b)(6) deposition, bearing Bates numbers SCS\_0006334-SCS\_0006339, SCS\_0006345

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(Information Use and Disclosure Agreement between SCS and Kimberlite Group LLC, dated May 9, 2014).

18. Attached as Exhibit 17 is a true and correct copy of Exhibit 28 to the SCS 30(b)(6) deposition, bearing Bates numbers SCS\_0001009-SCS\_0001013 (Settlement Agreement and Release between SCS and Societe Generale, dated July 3, 2013).

19. Attached as Exhibit 18 is a true and correct copy of Exhibit 35 to the SCS 30(b)(6) deposition, bearing Bates numbers SCS\_0000050-SCS\_0000052 (Email from Paul Edwards to Laurence Rosansky, dated February 18, 2013).

20. Attached as Exhibit 19 is a true and correct copy of Exhibit 38 to the SCS 30(b)(6) deposition, bearing Bates numbers SCS\_0000187-SCS\_0000192 (Information Use and Disclosure Agreement between Commerzbank and SCS, dated January 14, 2013).

21. Attached as Exhibit 20 is a true and correct copy of excerpts from the 30(b)(1) deposition of Paul Edwards, taken July 9-10, 2015.

22. Attached as Exhibit 21 is a true and correct copy of Exhibit 46 to the Edwards deposition (Information Use and Confidentiality Agreement between SCS, Jeffrey H. Beck, and Wells Fargo & Company, dated May 21, 2009).

23. Attached as Exhibit 22 is a true and correct copy of Exhibit 47 to the Edwards deposition (Deferred Assets Swap Transaction ('DAST'), dated July 24, 2009).

24. Attached as Exhibit 23 is a true and correct copy of Exhibit 48 to the Edwards deposition, bearing Bates numbers SCS\_0005262-SCS\_0005265 (Email from Paul Edwards to James G. Primus, dated September 5, 2012, attaching an "SCS Work Paper - DAD" presentation).

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25. Attached as Exhibit 24 is a true and correct copy of Exhibit 70 to the Edwards, deposition, bearing Bates numbers SCS\_0000610-SCS\_0000611 (Email from Paul Edwards to Marc Fuhrman, dated June 24, 2014). Exhibit 24 also appears as Exhibit 20 to the Parr deposition, *see ¶ 26, infra*.

26. Attached as Exhibit 25 is a true and correct copy of excerpts from the 30(b)(1) deposition of Adam Parr, taken July 21, 2015.

27. Attached as Exhibit 26 is a true and correct copy of Exhibit 21 to the Parr deposition (Advisory Agreement between SCS and General Motors Company, dated September 13, 2011).

28. Attached as Exhibit 27 is a true and correct copy of Exhibit 36 to the Parr deposition, bearing Bates number SCS\_000007768 (Email from Mark McTigue to Anthony Tuths, dated June 17, 2010, attaching a “Bond Exchange Transaction” presentation). Exhibit 27 also appears as Exhibit 9 to the SCS 30(b)(6) deposition.

29. Attached as Exhibit 28 is a true and correct copy of excerpts from the 30(b)(1) deposition of Marc Fuhrman, taken July 22, 2015.

30. Attached as Exhibit 29 is a true and correct copy of excerpts from the 30(b)(1) deposition of Mark McTigue, taken July 29, 2015.

31. Attached as Exhibit 30 is a true and correct copy of Exhibit 3 to the McTigue deposition, bearing Bates numbers SCS\_00003510-SCS\_00003511 (Email from Mark McTigue to Michael Wolff and Michael E. Newburg, dated July 24, 2009, attaching a “Deferred Asset Swap Transaction (“DAST”)” presentation).

32. Attached as Exhibit 31 is a true and correct copy of excerpts from the 30(b)(1) deposition of Laurence Rosansky, taken July 23-24, 2015.

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33. Attached as Exhibit 32 is a true and correct copy of Exhibit 3 to the Rosansky deposition, bearing Bates numbers SCS\_0000039-SCS\_0000049 (Email from Mark McTigue to Laurence Rosansky, dated May 20, 2011, attaching a “Societe Generale (‘SG’) Deferred Asset Swap Transaction (‘DAST’)” presentation). Exhibit 31 also appears as Exhibit 43 to the Edwards deposition.

34. Attached as Exhibit 33 is a true and correct copy of Exhibit 8 to the Rosansky deposition, bearing Bates numbers COBA\_0000296-COBA\_0000298, COBA\_0000293 (Confidentiality Agreement between Commerzbank and Societe Generale, dated September 5, 2012).

35. Attached as Exhibit 34 is a true and correct copy of Exhibit 12 to the Rosansky deposition, bearing Bates numbers SCS\_0000059-SCS\_0000061 (Confidentiality Agreement between SCS and Societe Generale, dated May 15, 2011). Exhibit 34 also appears as Exhibit 14 to the SCS 30(b)(6) deposition.

36. Attached as Exhibit 35 is a true and correct copy of Exhibit 15 to the Rosansky deposition, bearing Bates number SCS\_0005669 (Email from Laurence Rosansky to Paul Edwards, dated February 25, 2013).

37. Attached as Exhibit 36 is a true and correct copy of Exhibit 37 to the Rosansky deposition, bearing Bates numbers COBA\_0000329-COBA\_0000332 (Email from Laurence Rosansky to Nicholas Sopkin, dated October 5, 2012, attaching a “Term Sheet for Purchase and Sale Agreement -- French Government Bonds Purchase”).

38. Attached as Exhibit 37 is a true and correct copy of the Plaintiff’s First Supplemental Rule 26(a)(1) Disclosure.

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39. Attached as Exhibit 38 is a true and correct copy of excerpts from the 30(b)(6) deposition of Commerzbank, taken August 18, 2015.

40. Attached as Exhibit 39 is a true and correct copy of excerpts from the 30(b)(1) deposition of William Donohue, taken July 17, 2015.

41. Attached as Exhibit 40 is a true and correct copy of Exhibit 7 to the Donohue deposition, bearing Bates number COBA\_00007491-COBA\_0007493 (Email from N. Sopkin to B. Donohue, dated Dec. 18, 2012)

42. Attached as Exhibit 41 is a true and correct copy of Exhibit 8 to the Donohue deposition, bearing Bates number COBA\_00007576-COBA\_0007577 (Email from B. Donohue to P. Burrows, N. Aiken, dated Dec. 19, 2012).

43. Attached as Exhibit 42 is a true and correct copy of Exhibit 9 to the Donohue deposition, bearing Bates number COBA\_0000790 (Email from L. Rosansky to B. Donohue, dated Dec. 19, 2012).

44. Attached as Exhibit 43 is a true and correct copy of excerpts from the 30(b)(1) deposition of Leon Kozak, taken August 13, 2015.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 8, 2015 in New York, New York.



Philip A. Irwin